

Job Service Complaint Manual

Missouri Department of Higher Education and
Workforce Development
Office of Workforce Development

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Background

The civil rights violations of migrant and seasonal farmworkers (MSFWs) in state employment service offices lead to a lawsuit filed by NAACP in 1972. In 1974, Judge Charles Richey signed a court order establishing federal regulations governing federal and state Employment Service system, the Monitor Advocate system and Employment Service Complaint System. There must be a trained Complaint Specialist/Job Center Supervisor in each job center and satellite office.

Definition

A Complaint is an allegation or a representation made or referred to a state or local job center of a violation of Job Service regulations and/or other federal, state, or local employment related law.

Confidentiality

The identity of the complainant(s) and any person(s) who furnish information relating to, or assisting in, an investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.

Types of Complaints

- Job Service -Related
- Non-Job Service -Related
- Not Applicable to Job Service Complaint System

Job Service Related Complaints and Processing

Job Service-Related Complaints fall into two categories.

1. Job Center related- the job center violates Employment Services regulations through action or omission by job center staff with the alleged violation occurring within the last 12 months. This may also include another job center or more than one job center statewide or in another state.
2. Employer related- Concerns a specific job to which the complainant was referred by the job center in which the employer violates terms and conditions of the job order or employment related laws that occurred within the last 12 months. Alleged discrimination by an employer is also included.

Examples of Job Service-Related Complaints

- Violations of terms and conditions of a job order: Worker referred by job center on job order that states pay is \$9.00/hour; employer paid worker \$8.00/hour.
- Violation of employment-related law: Worker referred by job center, not paid for all hours worked.
- Job center staff refuses to provide migrant farmworker with job referral to non-agricultural job.
- Qualified female customer is referred by the career center to job for an auto mechanic; employer wants to hire a male.
- A customer files a complaint against an employer in Kansas.

- Customer files complaint in Jefferson City job center against employer in Kansas City to which he was referred by job center in Columbia.

Processing Job Service-Related Complaints

The Complaint Specialist/Job Center Supervisor must determine the type of complaint received and process it through to resolution. Every effort must be made to obtain all information necessary to investigate the complaint. A request should be made for a list of all the complainant's addresses and phone numbers where he/she may be contacted during the investigation, as well as, advising the complainant to maintain contact with the office during the investigation. All job service complaints must use the following steps:

1. Complete Employment and Training Administration (ETA) Form 8429 (original stays in locked file).
2. Log the complaint.
3. Give the complainant a copy of the completed complaint form.
4. Offer appropriate job center services to the complainant if the complainant is in the job center.

If the complaint involves **violation of Employment Service regulations by the job center staff** (but not regulations which prohibit discrimination):

1. Investigate the complaint.
2. If insufficient information, request additional information in writing.
 - a. Allow 40 working days for response from migrant and seasonal farmworkers (MSFWs).
 - b. Allow 20 working days for response from non-MSFWs.
3. Attempt resolution
 - a. Refer to State Monitor Advocate for MSFWs resolution within 5 working days from the date of the complaint.
 - b. Attempt for resolution must be within 15 working days for non-MSFWs from the date of the complaint.

If complaint successfully resolved:

- Note the date of resolution on Complaint Log.
- Notify the complainant and the respondent of the results in writing.

If resolution is not achieved:

- Refer the complaint to the State Monitor Advocate for non-MSFWs and send a copy of the complaint file.
- Inform complainant and respondent of the referral in writing.
- c. Until resolution is achieved, follow up with the complainant by telephone or other written communication:
 - ☐ Monthly for MSFWs (SMA)
 - ☐ Quarterly for non-MSFWs (local staff)

All actions, contacts, and attempted contacts concerning the complaint should be documented.

If the complaint involves violation of the terms and conditions of a job order by an employer:

1. Investigate the complaint.
2. If insufficient information, request additional information in writing.
 - a. Allow 40 working days for response from migrant and seasonal farmworkers (MSFWs).
 - b. Allow 20 working days for response from non-MSFWs.
3. Attempt resolution
 - a. Refer to State Monitor Advocate for MSFWs resolution within 5 working days from the date of the complaint.
 - b. Attempt for resolution must be within 15 working days for non-MSFWs from the date of the complaint.

If complaint successfully resolved:

- Note the date of resolution on the Complaint Log.
- Notify the complainant and the respondent of the results, in writing.

If resolution is not achieved:

- Refer the complaint to the State Monitor Advocate and send a copy of the complaint file.
 - Inform complainant and respondent of the referral, in writing.
 - Complaint Specialist/Job Center Supervisor may initiate the process for discontinuation of services to the employer and notify complainant of this action.
- c. Until resolution is achieved, follow up with the complainant by telephone or other written communication.
 - ☐ Monthly for MSFWs (SMA)
 - ☐ Quarterly for non-MSFWs

All actions, contacts, and attempted contacts concerning the complaint should be documented.

If complaint alleges **discrimination by an employer**:

1. Forward the complaint to the Equal Opportunity (EO) Officer for the Regional Workforce Development Board (WDB) and/or Danielle Smith the State EO Officer for processing.
2. The Missouri Human Rights Act makes it illegal to discriminate in any aspect of employment because of an individual's race, color, religion, national origin, ancestry, sex, disability or age (40 through 69).

If complaint involves **violation of an employment-related law other than discrimination by an employer**:

1. Prepare a referral letter to forward to the appropriate enforcement agency(ies).
 - ☐ Copy the complainant.

- ☐ Keep a copy of referral letter in the complaint file.
- 2. Send referral letter and copy of complaint with supporting documents to the appropriate enforcement agency(ies).
- 3. Conduct follow-up with the enforcement agency(ies) until resolution is achieved.
 - ☐ Monthly for MSFWs (SMA).
 - ☐ Quarterly for non-MSFWs.
- 4. Until complaint is resolved, contact the complainant to provide a status report after each follow-up with the referral agency(ies).
- 5. Note the date of resolution on the Complaint Log and notify the complainant of the results.
- 6. If a determination is made that the employer violated an employment-related law,
 - ☐ Complaint Specialist/Job Center Supervisor may initiate discontinuation of services.
 - ☐ Notify the complainant of this action.
- 7. If the final determination is in favor of the employer, the job center should notify the complainant.
- 8. All actions, contacts and attempted contacts concerning the complaint should be documented.

If complaint involves an employer in another state or another state workforce agency:

1. Prepare a referral letter to forward to the State Monitor Advocate.
2. Send the letter, a copy of the ETA Form 8429 and copies of any relevant documents to the State Monitor Advocate.
3. Provide the complainant a copy of the referral letter that was sent to the State Monitor Advocate.

If complaint involves another job center or is related to a specific job order posted by another job center:

1. Prepare a referral letter to forward to the appropriate job center.
2. Send the letter, a copy of the ETA Form 8429 and copies of any relevant documents to the job center that is the focus of the complaint.
3. Send a copy of all documents to the State Monitor Advocate.
4. Provide the complainant a copy of the referral letter that was forwarded to the job center.

H-2A Complaints

H-2A complaints can consist of those filed by:

- Individuals who are employed by an H-2A employer, whether or not the individual was referred through the job center.

- Individuals who applied for an H-2A job or made clear their intent to apply for an H-2A job.
- Other individuals whether or not he/she was employed by the H-2A employer.
Examples: employer discouraged eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against eligible U.S. worker.
- Individuals against an employer who applied for, but was not granted, H-2A labor certification, irrespective of whether an employer/employee relationship exists.

In these situations, workers that were not referred by the job center can file a Job Service-related complaint. This is an exception to the definition of Job Service and non-Job Service-related complaints. Although the complaint may not fit the definition of Job Service-related, it shall be treated as such due to program rules and regulations.

Processing H-2A Complaints:

1. Complete the ETA Form 8429.
2. Log the complaint.
3. Give the complainant a copy of the complaint form.
4. Offer appropriate job center services.
5. Prepare a referral letter to forward to the State Monitor Advocate.
6. Send the letter, a copy of the ETA Form 8429 and copies of any relevant documents to the State Monitor Advocate for resolution.
7. Provide the complainant a copy of the referral letter that was sent to the State Monitor Advocate.

All complaints made against H-2A employers must be forwarded to the State Monitor Advocate for processing.

The U.S. Department of Labor, Wage and Hour Division (WHD) enforces the work contract (ETA Form 790).

U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC) handles complaints alleging that an H-2A employer:

- Discouraged an eligible U.S. worker from applying,
- Failed to hire,
- Discharged, or
- Otherwise discriminated against an eligible U.S. worker

Complaint Resolution

Job Service-related complaints are considered resolved when any of the following occurs:

The complainant:

- Indicates satisfaction with the outcome
- Chooses not to elevate to the next level of review
- Fails to respond to written requests: 20 working days for non-MSFWs or 40 working days for MSFWs
- Exhausts final level of review

Appropriate enforcement agency makes final determination.

Non-Job Service-Related Complaints

- Not related to services provided through the job center
- Alleges violations of employment-related federal, state, or local laws
- Violations of laws enforced by Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), or other federal or state enforcement agencies

Examples of non-job service related complaints are:

- A seasonal farmworker, who was referred to the job by a friend, files a complaint because the employer has pesticides sprayed in a field where workers are present
- An employee who applied for a job on the company's website complains the employer is not paying minimum wage

Processing Non-Job Service-Related Complaints

MSFW Non-Job Service-Related Complaints should be elevated to the State Monitor Advocate.

1. Complete the ETA Form 8429 (original stays in file).
2. Log the complaint.
3. Give the complainant a copy of the complaint form.
4. Offer appropriate job center services.
5. Prepare a referral letter to forward to the State Monitor Advocate.
 - a. Copy the complainant.
 - b. Keep a copy of referral letter in the complaint file.
3. Send referral letter and copy of complaint with supporting documents to the State Monitor Advocate (Follow-up is not required)

All other non-job service related complaints:

- Log the complaint.
- Direct the complainant to the appropriate enforcement agency, another public agency, a Legal Aid attorney, a consumer advocate, or other appropriate agency.
- Offer appropriate job center services.
- Follow-up on this referral is not required.

Not Applicable to Job Service Complaint System are complaints that relate to Workforce Innovation and Opportunity Act (WIOA), UI or complaints submitted by Veterans. Instruct the customer to follow the program's respective grievance procedures.

Complaint Filing Process

There must be trained Complaint Specialist/Job Center Supervisor in each job center and satellite office.

Complaints may be received in person, by signed letter, or via email. The customer should never be instructed to contact another agency prior to determining if the complaint is Job Service-related or is MSFW.

Complaints filed in person should follow the procedure listed below;

1. Explain the Job Service complaint system.
2. Determine the type of complaint.
 - a. Job Service-related, Non-Job Service-related, Not applicable

2. Complete the Employment and Training Administration (ETA) Form 8429, if appropriate.
3. Log the complaint.
4. Offer complainant job center services.

Complaints Received by Mail

Letters without sufficient information requiring a request for additional information sent to the complainant in writing should allow:

- 40 working day response period for MSFWs
- 20 working day response period for non-MSFWs

A letter signed by an attorney representing the complainant serves as a valid complaint and should be treated like a properly completed ETA Form 8429, provided it contains all required elements necessary to conduct an investigation. Correspondence/communication should be directed to the attorney.

Complaints Received by E-Mail

ETA Form 8429 should be emailed with a request to complete Part I. The signed form should then be emailed, faxed, sent by mail or brought in-person to the career center. If the email contains allegations of discrimination, it should also be forwarded to the EO Officer.

Apparent Violations

Apparent Violation arises when a State Job Center employee observes or is in receipt of information regarding a suspected violation of employment-related law or ES regulations by an employer that involves an MSFW, or has reason to believe that such a violation has occurred. Staff must document these suspected violations in writing and refer to local center supervisor. These would include violations of administrative regulations such as noncompliance of job order assurances and violations of work-related laws enforced by other agencies. Staff would then refer these violations to the State Monitor Advocate. (20 CFR 653.113)



UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

**COMPLAINTS?
¿QUEJAS?**



**IF YOU HAVE A
COMPLAINT ABOUT:**

- A Job Center
 - A job you were referred to by a Job Center
- Contact your local One-Stop Job Center or write to the State Monitor Advocate.**

If you have a complaint about other employment-related issues, your local One-Stop Career Center will provide you with information on agencies that may be able to assist you.

**SI USTED TIENE UNA
QUEJA ACERA DE:**

- Un Centro Vocacional
- Un trabajo al que fue referido por un Centro Vocacional

Contacta su Centro Vocacional más cercano o escriba a State Monitor Advocate.

Si usted tiene una queja acerca de otros asuntos laborales, su Centro Vocacional le proporcionará información sobre las agencias que queden ofrecerle ayuda.

State Monitor Advocate • Consejera de Monitoria Estatal

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Record Keeping and Reporting

Complaint logs must be submitted to the State Monitor Advocate by the 5th working day after the end of the quarter in which a Job Service or non-Job Service-related complaint was logged. A negative report (where no complaints were filed) should be noted on the log.